

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petition of Certain
Lands from the City of Lake Elmo
Pursuant to Minnesota Statutes
Chapter 414

**FINDINGS OF FACT,
CONCLUSIONS AND
DECISION**

The above-entitled matter came on for an evidentiary hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on October 4 and 5, 2011, at the Washington County Government Center, Courtroom 209, 14949 62nd Street North, Stillwater, Minnesota. The parties filed a written stipulation of facts on October 18, 2011, and post-hearing briefs on October 31, 2011. On November 2 and 3, 2011, the parties filed correspondence relating to the submission of a written “closing argument” by the City of Stillwater. The record closed on November 3, 2011.

Paula A. Callies, Attorney at Law, Callies Law, PLLC, 1450 The Colonade, 5500 Wayzata Boulevard, Minneapolis, MN 55416, appeared on behalf of the Petitioners Bernard and Loella Nass, Thomas and Patricia Bidon, and Robert Buberl.

David K. Snyder, Attorney at Law, Eckberg Lammers PLLP, 1809 Northwestern Avenue, Stillwater, MN 55082, appeared on behalf of the City of Lake Elmo.

During the hearing, testimony was taken and the following exhibits were received into evidence: Petitioners’ Exhibits 1-4 and 6-20; and City Exhibits 100-120, 123-126, and 129-130. In addition, the parties stipulated that all documents from the Municipal Boundary Adjustments Unit (MBA) file listed in the March 10, 2011, Memorandum from Christine Scotillo to the Administrative Law Judge would be considered part of the record.¹

STATEMENT OF THE ISSUES

The issue in this proceeding is whether the (amended) Petition for Detachment filed by Bernard and Loella Nass, Thomas and Patricia Bidon, and Robert Buberl should be granted based on the factors set forth in Minn. Stat. § 414.06 (2010).²

The Administrative Law Judge concludes that the Petition for Detachment should be granted.

¹ Stipulation at ¶ I (a) (Oct. 18, 2011).

² All citations to Minnesota Statutes are to the 2010 edition, unless otherwise noted.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Findings

1. On November 15, 2010, the Municipal Boundary Adjustment Unit (MBA) received a petition for detachment from the City of Lake Elmo to Stillwater Township pursuant to Minn. Stat. § 414.06. The petition was filed by three property owners (Bernard and Loella Nass, and Robert Buberl). The Petition sought to detach approximately 50 acres from the City of Lake Elmo.

2. On December 7, 2010, the Lake Elmo City Council adopted a resolution objecting to the Petitioners' proposed detachment from Lake Elmo.³

3. On January 10, 2011, the MBA convened a preliminary hearing on the petition, and the matter was continued indefinitely to allow the parties time to resolve the contested issues through discussions.

4. In February 2011, the Petitioners and the City of Lake Elmo notified the MBA that they were unable to resolve the contested issues through discussion, and subsequently counsel for the parties requested the matter be assigned to an Administrative Law Judge and set on for hearing.

5. The matter was assigned to Administrative Law Judge Kathleen D. Sheehy on or about March 9, 2011.

6. A prehearing conference was conducted by the Administrative Law Judge on April 8, 2011, and the evidentiary hearing was scheduled for October 4-5, 2011.

7. On May 13, 2011, the Petitioners filed a motion to amend the Petition to include Patricia and Thomas Bidon, and Kenneth and Nancy Hauth as petitioners.

8. By Order dated May 25, 2011, the Administrative Law Judge granted the motion to amend the Petition.

9. On June 1, 2011, the Petitioners filed the Amended Petition for Detachment from the City of Lake Elmo (hereinafter referred to as "the Petition"). The Petition was filed by seven property owners and sought to detach approximately 58 acres from the City of Lake Elmo to Stillwater Township.

10. On July 27, 2011, Petitioners Kenneth and Nancy Hauth and the City of Lake Elmo entered into a written stipulation for dismissal wherein all claims, counterclaims and crossclaims were dismissed with prejudice. An Order of Dismissal based on the executed stipulation was issued on August 11, 2011.

³ Ex. 109.

11. With the dismissal of the Hauths from the Petition for detachment, the property proposed for detachment (hereinafter referred to as the Subject Property) in the Petition at issue in this matter is described as follows:

Nass Southerly Property:

All that part of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 29, Range 20 that lies Northerly of the following described line: Commencing at the Southwest corner of the Northwest $\frac{1}{4}$ of said Section 6; thence North 1 degree 14 minutes 50 seconds East, along the West line of said Northwest $\frac{1}{4}$ for 969.67 feet to the point of beginning of the line to be described; thence South 87 degrees 25 minutes 34 seconds East for 1120.72 feet and there terminating except the North 1236.51 feet thereof and also excepting therefrom all that portion of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 6, lying West of the Town Road (also known as Manning Avenue North) as it now traverses said Section 6, according to the United States Government Survey thereof and situate in Washington County, Minnesota.

and

Nass Northerly Property:

All that part of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 29, Range 20 West that lies Southerly and Westerly of the Southerly right of way line of Minnesota Trunk Highway No. 36 and Northerly and Westerly of the following described line; Beginning at a point on the West line of said Northwest $\frac{1}{4}$ that is 923.00 feet, as measured along said West line, Southerly of the Northwest corner of said Section 6; thence Northeasterly by a deflection angle to the right of 73° for a distance of 336.41 feet; thence Southerly, parallel to the West line of said Northwest $\frac{1}{4}$, for a distance of 784.70 feet more or less to the East line of said Northwest $\frac{1}{4}$, of Northwest $\frac{1}{4}$ and there terminating. Subject to Manning Avenue and N.S.P. easement across said property.

and

Buberl Property:

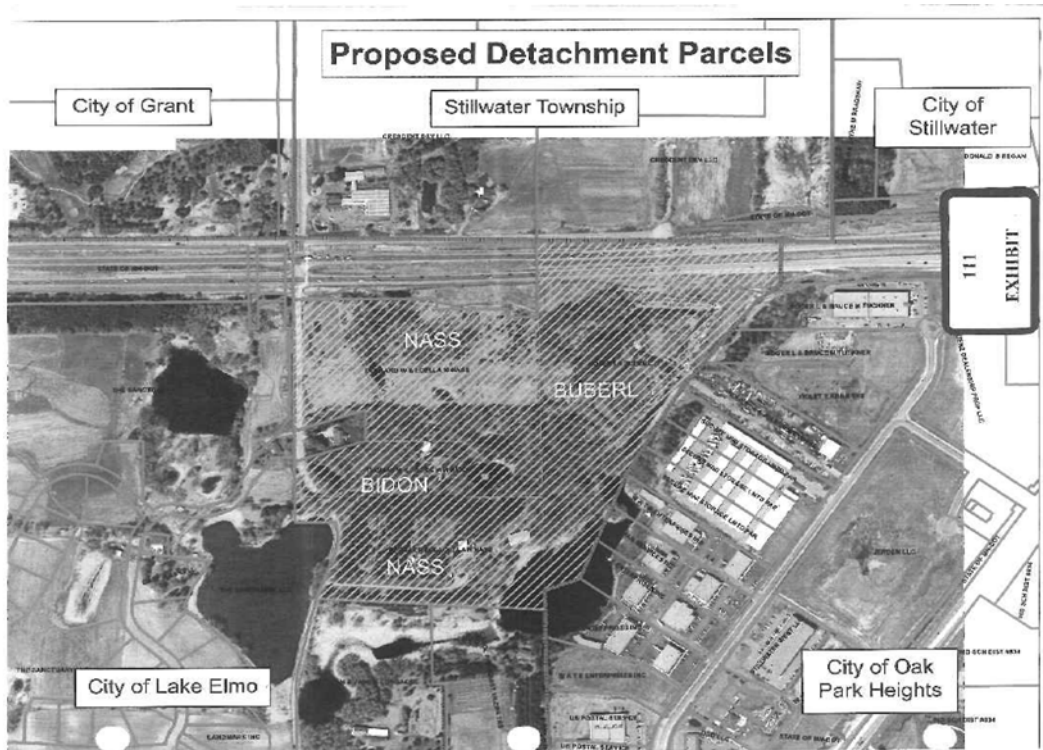
That part of the East Half of the Northwest Quarter of Section 6, Township 29 North, Range 20 West, Washington County, Minnesota lying Westerly and Northerly of KERN CENTER and KERN CENTER 2nd ADDITION, according to the plats of record and on file in the office of the County Recorder, Washington County, Minnesota containing 22.99 acres, more or less. Subject to a highway easement along the Northerly line thereof for Trunk Highway 36 as described in Book 275 of Deeds, Page 497, of record and on file in said Office of the County Recorder. Also subject to a transmission line easement in favor of Northern States Power Company as described in Book 297, Page 288, of record and on file in said Office of the County Recorder.

and

Bidon Property:

All that part of the North 1341.01 feet of the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 6, Township 29, Range 20, lying Southerly of the following described line: Beginning at a point on the west line of said NW $\frac{1}{4}$ that is 1071.50 feet Southerly of the Northwest corner, thence Northeasterly by a deflection angle to the right of 73° for a distance of 330.0 feet; thence Easterly parallel to the north line of said NW $\frac{1}{4}$ for 795 feet, more or less, to the East line of said W $\frac{1}{2}$ and there terminating except the south 104.5 feet of said W $\frac{1}{2}$ of said NW $\frac{1}{4}$. Subject to encumbrances of record.⁴

12. The Subject Property is depicted on the following map:



13. The Subject Property is within the boundaries of the City of Lake Elmo. It abuts the City's boundary on the east and partially abuts the City's boundary on the north (the Buberl parcel). The Nass northerly parcel abuts the State of Minnesota right-of-way for Trunk Highway 36 on the north, which is as close as it could be to the City of Lake Elmo's municipal boundary on the north side of Trunk Highway 36.⁵

⁴ Stipulation, Ex. A.

⁵ Ex. 111; Ex. 102. See also Testimony of Dan Thurmes (Nass property would abut northern boundary of Lake Elmo except for Highway 36 right-of-way).

14. The perimeter of the Subject Property is 55% bordered by the City of Lake Elmo, 23% by Stillwater Township, and 22% by the City of Oak Park Heights.⁶

15. The Subject Property contains 0.4 miles of highway (Trunk Highway 36) and 0.2 miles of streets (Manning Avenue).⁷

16. In the area north of Highway 36, Manning Avenue is CSAH 15, which runs through Grant and Stillwater Townships and the City of Stillwater. CSAH 15 plays a significant role in the County's transportation system.⁸

17. In the area south of Highway 36, in the Subject Property, Manning Avenue is paved for approximately two blocks from Highway 36 to 58th Street, which is the entrance to the St. Croix Sanctuary, a development of large homes. The remainder of the roadway, from 58th Street running south to 55th Street, is a gravel road that dead-ends at the City's well house #2. Well house #2 was constructed to serve the needs of the Sanctuary and another housing development to the southeast called Carriage Station.⁹ This section of Manning Avenue is sometimes referred to as Manning Trail.¹⁰

18. The City of Lake Elmo provides no water, sanitary sewer, storm sewer, solid waste collection or disposal, or law enforcement services to the Subject Property. It does provide fire protection, street improvements and maintenance, administrative, and recreational services.¹¹

19. The total acreage of the Subject Property is 57.17 acres. The Nass northerly parcel is 16.03 acres, the Nass southerly parcel is 11.81 acres, the Buberl parcel is 22.88 acres, and the Bidon parcel is 6.45 acres.¹²

20. Notice of the evidentiary hearing was published in the Oakdale-Lake Elmo Review on September 21, 2011, and September 28, 2011. The notice indicated that members of the public interested in this matter could submit written data, statements or arguments by mail or email to the Administrative Law Judge by October 5, 2011. No public comments were received.

Detachment from Baytown Township

21. In 1998, the Subject Property was part of an area of land annexed to Lake Elmo from Baytown Township as a result of competing petitions for annexation filed with the Minnesota Municipal Board.¹³

⁶ Ex. 109 at p. 2.

⁷ *Id.*

⁸ Testimony of Clark Wicklund.

⁹ Ex. 2; Ex. 6; Ex. 101.

¹⁰ Ex. 2.

¹¹ Ex. 109.

¹² Stipulation at II(b).

¹³ Ex. 1. The Minnesota Municipal Board was the predecessor of the Municipal Boundary Adjustment Unit and was charged with hearing and deciding local incorporation and boundary adjustment issues.

22. In July 1997, a number of Baytown Township property owners (including Bernard and Loella Nass) filed a petition seeking annexation of approximately 310 acres to the City of Oak Park Heights. The area proposed for annexation abutted Oak Park Heights on its eastern border and was also bordered by the City of Stillwater and Highway 36 to its north, and Lake Elmo on the western and southern borders. All of the Subject Property at issue in this proceeding was included in the area proposed for annexation to Oak Park Heights.¹⁴

23. One month after the property owners filed their petition, Lake Elmo and Baytown Township filed an orderly annexation agreement with the Municipal Board requesting the immediate annexation of the same property.¹⁵

24. After considering the competing annexation petitions, the Municipal Board, on April 17, 1998, reduced the area proposed for annexation to Oak Park Heights to include only the commercially developed area, and it ordered this reduced area annexed to the City of Oak Park Heights. The remainder of the subject area was annexed to Lake Elmo pursuant to the orderly annexation agreement between it and Baytown Township.¹⁶

25. In the Memorandum accompanying its Order, the Municipal Board stated that it was confident that Lake Elmo would, through the comprehensive plan revision process, reconcile its own development policies and philosophy with the Metropolitan Council's growth strategy. The Board also acknowledged the evidence of existing land uses adjacent to the subject area.¹⁷

26. As a result of the Board's Order, Robert Buberl's property was divided diagonally along the length of a creek (west of Highway 5), with the property east of the creek and west of Trunk Highway 5 being annexed to Oak Park Heights. His property west of the creek and south of Trunk Highway 36 was annexed to Lake Elmo, along with the rest of the Subject Property in this case.¹⁸

City of Lake Elmo

27. The City of Lake Elmo is approximately 15,523 acres in size. As of 2009, Lake Elmo's population was estimated to be 8,326.¹⁹ Lake Elmo had 2,814 households in 2009.²⁰

28. There is limited high-density residential or commercial development in the City of Lake Elmo.

¹⁴ Ex. 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; Testimony of Robert Buberl and Kyle Klatt.

¹⁹ Stipulation at II(c).

²⁰ Testimony of Dean Johnston; Ex. 18.

29. Over the years, the City of Lake Elmo resisted efforts by the Metropolitan Council to conform its planning policies to accommodate more urban (sewered) growth. In January 2005, after losing a lawsuit it brought challenging the Metropolitan Council's authority to require cities to accommodate more growth, the City of Lake Elmo entered into a Memorandum of Understanding with the Metropolitan Council. Under the terms of the Memorandum of Understanding, Lake Elmo committed to reaching the following targets by 2030: 6,500 new Residential Equivalent Units (RECs) of Regional Sewer service and city-wide population of 24,000. The term REC was defined as one residential connection and/or the equivalent of 10 employees for new business operations.²¹

30. The City of Lake Elmo's Comprehensive Land Use Plan now includes a Staging Plan for development to meet the Metropolitan Council goals of population, household, and sewered growth. The Development Staging Plan is a critical component of the comprehensive plan that is intended to ensure that the City's ability to deliver municipal services, its ability to efficiently construct required public infrastructure to service new and existing residents and businesses, and the City's financial well-being are all matched to a prescribed maximum pace of growth in new residents and employment over the planning period to 2030.²² The Subject Property is not included in land proposed for staged development through 2030.²³ Any high-density residential or commercial development that occurs in the future will take place in either the Old Village or the Highway 94 corridor.²⁴

31. According to Lake Elmo, limiting non-residential land use to these two geographic areas will enhance its policy of retaining the rural character of the community.²⁵

32. The City failed to meet its population, household, and REC commitments for 2010 due to the prolonged downturn in the economy. It obtained temporary relief from the Wastewater Inefficiency Fee (WIF) due to the Metropolitan Council and an extension of time to meet these goals in a Memorandum of Understanding executed in December 2010.²⁶

Proposed Detachment Area

33. The Subject Property is made up of four separate parcels of land constituting the northeastern corner of the City of Lake Elmo. The Subject Property includes most of Manning Avenue to the west, Trunk Highway 36 to the north, and additional parcels located in Lake Elmo to the south.²⁷

²¹ Ex. 20; Test. of K. Klatt.

²² Ex. 19 at III-16.

²³ Ex. 19 at III-16 and attached map.

²⁴ *Id.*

²⁵ Ex. 18 at II-2; Ex. 19 at III-8.

²⁶ Ex. 119.

²⁷ Exs. 111 & 118.

34. As a whole, the Subject Property abuts a boundary of Lake Elmo to the west and south, a boundary of Oak Park Heights to the east, and a boundary of Stillwater Township to the north.²⁸

35. The current and planned future zoning designation for the Subject Property is AG (Agricultural). Under the Lake Elmo Comprehensive Plan 2005-2030, the existing and future land use designation for the Subject Property is RAD (Rural Agricultural Density).²⁹

36. The classification “RAD” represents low-density semi-rural residential development. Working farms, agricultural uses, and single-family detached residences are permitted under this classification. New development within RAD areas can take place through a conditional use permit in accordance with the Open Space regulations of the City’s zoning ordinance, with a maximum dwelling unit density of 0.45 units per buildable acre.³⁰

37. The City’s RAD classification and zoning regulations would permit each of the four parcels in the Subject Property to have a single house; however, if the Petitioners were to combine their property, and if a developer were interested in constructing another residential housing development in the area, up to 18 homes could potentially be constructed on 40 contiguous acres under the Open Space regulations of the zoning ordinance.³¹

38. RAD is a common land use designation in Lake Elmo and exists in large quantities throughout the city.³²

39. The City of Lake Elmo also allows property owners to apply for interim use permits to use their land on a temporary basis in ways that differ from what is allowed under current zoning classifications. For areas zoned Agricultural, Lake Elmo would allow two interim uses: agricultural sales and agricultural entertainment.³³

40. The Subject Property could support agricultural uses such as farming, boarding horses, and raising crops.³⁴

41. None of the Petitioners seek detachment to Stillwater Township in order to advance the agricultural use of their property.

42. Bernard and Loella Nass own two parcels in the Subject Property. They purchased the property as a hobby farm in the early 1980s. The northern parcel is approximately 16 acres of pasture land. The width of the northern parcel is subject to an easement for high-voltage transmission lines owned by Xcel Energy. This parcel

²⁸ Exs. 6 & 102.

²⁹ Exs. 7 & 19 (Existing and Future Land Use maps); Ex. 105; Test. of D. Johnston and K. Klatt.

³⁰ Ex. 19 at 2.

³¹ Testimony of K. Klatt.

³² Test. of C. Wicklund; Ex. 19 (map of Future Land Use).

³³ Ex. 106; Test. of K. Klatt and D. Johnston.

³⁴ Test. of D. Johnston and K. Klatt.

formerly was used as pasture for horses, because the power lines did not interfere with this activity. The southern parcel is about 11 acres and is heavily treed with pines. A home and horse barn are located on the southern parcel. The parcels do not have municipal water or sewer services.³⁵

43. In recent years renters have had little interest in leasing the north parcel for horse pasture. At one time the Nasses operated a tree farm on the southern parcel, but they are unable to operate it as a farm now because of their age. The property has been for sale for two years, and they have received no offers. At the time of the hearing, Bernard and Loella Nass were in the process of moving out of their home on the Subject Property and had no prospect of generating any income from it.³⁶

44. The Nasses have talked to developers over the years about the potential for developing the property and all have maintained that neither parcel is suited for residential development given the power lines running through the northern parcel, the proximity to Highway 36, and the location of commercial warehouse buildings and a parking lot directly to the east of the southern parcel in Oak Park Heights. A mixed-use or commercial development would be the most appropriate option for this parcel.³⁷

45. Thomas and Patricia Bidon own the parcel in the Subject Property located between the northern and southern parcels owned by the Nasses. Their parcel also abuts the Buberl property to the east. The Bidons have owned this parcel since 1999. When the Bidons purchased the property, it was located in Baytown Township. When they moved in, it was located in Lake Elmo as a result of the annexation. The Bidons have a house and a pole barn on their property, which is served by a well and septic system. No agricultural activity takes place on the land.³⁸

46. Mr. Bidon is a commissioner on the Lake Elmo Planning Commission. On at least two occasions, developers expressed interest in the Bidon property, but that interest evaporated when the developers concluded that Lake Elmo would not re-zone the property to permit higher-density residential or commercial development.³⁹

47. Robert Buberl has owned the triangular shaped property to the east of the Nass and Bidon parcels since 1994. He operates an organic composting/recycling facility on this property. The composting activity takes place on the portion of his property in Lake Elmo; there, he composts grass, leaves and brush. The composting activity is permitted as an agricultural use under a conditional use permit. The recycling activity takes place on the portion of his property that is located in Oak Park Heights, where his office building is located. The recycling activity is permitted by the Minnesota Pollution Control Agency and Washington County. Driving access to all portions of the property is through Oak Park Heights.

³⁵ Testimony of Kris Nass and Bernard Nass.

³⁶ Test. of B. Nass.

³⁷ Test. of K. Nass.

³⁸ Testimony of Thomas Bidon.

³⁹ *Id.*

48. Mr. Buberl's parcel extends across Highway 36 to the north and includes the frontage road abutting Stillwater Township.⁴⁰ Several commercial buildings located in Oak Park Heights are directly adjacent to Mr. Buberl's property, including a mini-storage facility and a John Deere dealership.⁴¹

49. Mr. Buberl's property is currently in foreclosure. He is working with the bank in an effort to retain ownership of the property.⁴²

50. None of the parcels in the Subject Property are served by municipal sewer, and Lake Elmo has no plans to ever extend municipal sewer service to this area.

51. None of the parcels in the Subject Property are served by municipal water, but there is municipal water service in the nearby Sanctuary housing development. Water service could be extended to the subject property from this area.⁴³

52. There is existing water and sanitary sewer service in Oak Park Heights, just to the east of the Subject Property.⁴⁴

53. There are only two households in the Subject Property. Bernard and Loella Nass have a house on their southern parcel, and the Bidons have a house on their parcel.

54. Directly to the west of the Subject Property within Lake Elmo is the Sanctuary, an open space residential housing development. To the south of the Subject Property within Lake Elmo is Carriage Station, another open space residential housing development. The Sanctuary abuts the Nass property line at Manning Avenue.⁴⁵ Neither development has sewer services. Instead, both developments were built with on-site septic systems.⁴⁶

55. The Sanctuary development was platted to have 62 homes; however, only 30 to 40 homes have been built so far, and the City processed only about ten building permits for the Sanctuary development in the last ten years.⁴⁷

56. The Carriage Station development to the south of the Subject Property is zoned RAD2 – semi-rural residential development with a maximum dwelling unit density of 2 units per buildable acre and with overlay to allow for mixed use of housing and office.⁴⁸

⁴⁰ Ex. 1; Test. of R. Buberl.

⁴¹ Ex. 118; Ex. 4D.

⁴² Test. of R. Buberl; Ex. 100 (Notice of Lis Pendens).

⁴³ Testimony of John Griffin; Test. of K. Klatt; Exs. 116-118.

⁴⁴ Test. of C. Wicklund; Ex. 14.

⁴⁵ Exs. 4H and 105; Test. of K. Klatt .

⁴⁶ Test. of K. Klatt.

⁴⁷ *Id.*

⁴⁸ *Id.*

57. When the Carriage Station housing development was platted, the Lake Elmo City Council made a commitment to the developer to vacate (close) 55th Street south of Highway 36, where it intersected with Manning Avenue, to reduce traffic cutting through the residential neighborhood to connect with Manning Avenue and Highway 36.⁴⁹ The City Engineer believed that closure of 55th Street would hinder the development of property to the north (the Subject Property) and recommended instead that Manning Avenue be upgraded and improved as a collector route so residents could make use of the signal at Trunk Highway 36 and Manning Trail. In June 2005, the City Council voted to vacate 55th Street, contrary to the recommendation of the City Engineer.⁵⁰

58. The closure of 55th Street limited access to the Petitioners' property. Because 55th Street no longer connects to Manning Avenue, persons approaching the Subject Property from the south are required to travel northeast on Highway 5 to Highway 36, then backtrack west on Highway 36 and south on Manning Avenue in order to access the property.⁵¹ Prior to the closure of 55th Street, persons could access 55th Street from Highway 5 and go north on Manning Avenue to access the Subject Property.⁵²

59. Given the location and features of the Subject Property, including the siting of high-voltage transmission lines across the width of the Nass northern parcel, the proximity of Highway 36, and the commercial warehouse buildings and businesses located directly to the east in Oak Park Heights, residential development of the Subject Property is unlikely.⁵³

60. The Subject Property is currently rural in character, and it has not been developed for urban residential, commercial or industrial purposes.

Stillwater Township/City of Stillwater

61. Stillwater Township proper is located approximately 3 miles north of the Subject Property. Stillwater Township has, however, four southerly remnant parcels along the western boundary of the City of Stillwater. The most southerly remnant parcel of the township (the Bergman property) is located immediately east of Manning Avenue and north of Highway 36. This remnant parcel abuts the Subject Property along the Buberl parcel's property line.⁵⁴

62. In August 1996, the City of Stillwater and Stillwater Township entered into an orderly annexation agreement that governs the phased annexation of properties from the township to the city. The third phase of that agreement will occur in 2015. In that

⁴⁹ Test. of D. Johnston and C. Wicklund; Ex. 2.

⁵⁰ Ex. 2.

⁵¹ Test. of C. Wicklund.

⁵² Test. of K. Nass.

⁵³ *Id.*

⁵⁴ Ex. 102; Test. of D. Thurmes.

phase, the four most southerly parcels of the township may be annexed to the City of Stillwater upon the request of the property owners.⁵⁵

63. Property owners and developers may petition for early annexation of township land to Stillwater prior to 2015, and these petitions may be granted if certain criteria are met (contiguous to City, utilities available, Council finds it acceptable).⁵⁶

64. If Stillwater Township acquires new property, the orderly annexation agreement would not govern the new property, although the agreement could be amended.⁵⁷

65. Stillwater Township has no commercial area and no municipal water or sewer services.⁵⁸ Under the City of Stillwater's comprehensive plan, after annexation this area will be guided for job-generating use, such as commercial retail or office space.⁵⁹

66. The City of Stillwater plans to provide municipal services (sewer and water) to Stillwater Township's remnant parcels by 2030. The northerly extension of the City of Stillwater's water and sewer is currently just north of the Bergman property (north of Highway 36 at 62nd Street). A force main sewer runs down 62nd street to Curve Crest, which services professional office buildings off Highway 36.⁶⁰

67. Stillwater Township has chosen to remain neutral in this detachment proceeding and has indicated to the Petitioners that if the detachment petition were granted, the Township would be willing to accept the Subject Property.⁶¹ In the factual information submitted to the MBA, the Township indicated that it had taken no official position in favor of or against the detachment; that the Township would not suffer any undue hardship and that its symmetry would not be affected if the detachment were approved; and that the Subject Area would not assume any Township indebtedness.⁶² The chair of the Stillwater Township Board, David Johnson, attended the prehearing conference and the hearing but did not otherwise participate.

68. The City of Stillwater has remained neutral about the prospect of receiving into the city any property south of Highway 36, although in general planning discussions the City has taken the position that Highway 36 is a good physical boundary for the City. The City has not taken any formal position on this proposed detachment.⁶³

69. The Metropolitan Council reviewed the petition for detachment and concluded that the proposed detachment would not have an adverse effect on regional

⁵⁵ Ex. 133.

⁵⁶ Testimony of Bill Turnblad.

⁵⁷ *Id.*

⁵⁸ Test. of K. Nass.

⁵⁹ Test. of B. Turnblad.

⁶⁰ *Id.*

⁶¹ Test. of K. Nass; Email dated Feb. 9, 2011, from David Johnson to Christine Scotillo/MBA.

⁶² Factual Information provided by Township Board to MBA (Dec. 23, 2010).

⁶³ Test. of B. Turnblad.

systems; if detachment were approved, however, the City of Lake Elmo, Stillwater Township, and possibly the City of Stillwater would be required to amend their comprehensive plans and submit the amendments for approval by the Council.⁶⁴

Petitioners' Past Attempts to Reclassify/Develop Property

70. In 2002, Bernard and Loella Nass hired an attorney to petition the Lake Elmo City Council to change their property's land use designation in the City's Comprehensive Plan from RAD to Commercial. The Lake Elmo City Council denied their request.⁶⁵

71. In 2006, the Nasses met with Lake Elmo's interim City Planner and Mayor to discuss potential development of their property. The City Planner and Mayor told the Nasses that if all the surrounding landowners combined their property for a housing development project, they could build 18 houses on 40 acres under the City's Open Space regulation.

72. In September 2006, the Petitioners submitted a letter to the Oak Park Heights City Council requesting that their properties be detached from Lake Elmo and annexed to Oak Park Heights. In response to their request, Oak Park Heights City Manager Eric Johnson sent a letter to the Lake Elmo City Council requesting that the two city councils hold a joint meeting to discuss the annexation request. The Lake Elmo City Council declined to meet on the annexation request.⁶⁶ The Oak Park Heights City Council could proceed no further with the Petitioner's request because its comprehensive plan provides that it will not pursue any annexation from a neighboring community without the neighboring community's consent.⁶⁷

73. Given the zoning and land use restraints, the Petitioners have not garnered any interest in their property from developers and consequently, the Petitioners have not recently approached the City Council with any proposals for land use or development. The Mayor of Lake Elmo believes that if the Petitioners proposed a higher-density development plan for their parcels, the City Council would not view it favorably.⁶⁸

74. Lake Elmo is opposed to the detachment petition in part because it wants to maintain the quiet residential character of the Sanctuary development by preserving the Subject Property as a semi-rural buffer to future commercial development. Lake Elmo also wants to minimize the number of people exiting Highway 36 and driving through the Sanctuary neighborhood. Lake Elmo is concerned that if the Subject Property is detached and commercial retail uses are developed on the property, it will

⁶⁴ Information Submission from Metropolitan Council to MBA (Jan. 3, 2011).

⁶⁵ Test. of K. Nass and K. Klatt.

⁶⁶ Ex. 3; Test. of K. Nass.

⁶⁷ Test. of K. Klatt.

⁶⁸ Test. of D. Johnston.

be a significant departure from what Lake Elmo planned for the area and what the residents of the Sanctuary expected when purchasing their homes.⁶⁹

75. Detachment of the Subject Property would not adversely affect Lake Elmo's ability to meet its commitment to the Metropolitan Council to increase the number of households connected to municipal sewer, since the Subject Property is not in an area in which the City plans to extend future sewer services.⁷⁰

76. Detachment of the Subject Property would not adversely affect Lake Elmo's ability to meet its commitment to the Metropolitan Council to accommodate population growth. The Subject Property is expected to remain zoned as Agricultural for the foreseeable future and as such would be limited to its current density, unless a developer were to acquire 40 contiguous acres for an open space development. For the reasons described above, this prospect is unlikely. The Subject Property is not in an area of Lake Elmo that is staged for growth under the City's comprehensive plan, and the Subject Property is not needed for the City's reasonably anticipated future development. Rather, Lake Elmo's primary interest in the Subject Property is to preserve its current use as a buffer to the commercial development in Oak Park Heights.⁷¹

77. Detachment of the Subject Property would not unreasonably affect the symmetry of Lake Elmo's boundaries. The City currently has an unusual and irregular diagonal boundary along its northeast corner due to the manner in which Mr. Buberl's property was divided along the creek. Detachment of the Subject Property would remove that diagonal boundary and enhance Lake Elmo's symmetry by establishing Manning Avenue as the eastern boundary. Detachment would create a protrusion around the Hauth property, but this small protrusion does not amount to an unreasonable effect on the symmetry of Lake Elmo's boundaries when the change would otherwise make the boundary more symmetrical.⁷²

Economic Repercussions of Detachment

78. The City of Lake Elmo's budget for 2010 was approximately \$2,484,900. If the Subject Property were detached, Lake Elmo would lose approximately \$3,900 in property tax revenues.⁷³

79. If the Subject Property were detached and moved into Stillwater Township, the Nass parcels would experience annual tax savings of about \$265 in taxes; the Bidon parcel would save about \$157 in taxes; and the Buberl parcel would save about \$146 in taxes.⁷⁴

⁶⁹ Test. of D. Johnston and K. Klatt.

⁷⁰ Test. of K. Klatt.

⁷¹ See, e.g., Ex. 109 at 6 (identifying City's undue hardship as the Subject Property's potential for future use to be altered to a non-residential use in conflict with adjacent surrounding land in Lake Elmo).

⁷² Test. of J. Griffin.

⁷³ Testimony of Tom Bouthilet; Ex. 120.

⁷⁴ *Id.*

80. If the Subject Property were detached and thereafter annexed to the City of Stillwater, the Petitioners would pay more in taxes. Depending on whether the parcels were within the urban service or rural service district, the total amount in taxes paid by the Subject Property would increase by approximately \$3,000 to \$5,500.⁷⁵

81. Given the small acreage of land and minimal amount of tax revenues at issue in this detachment proceeding, as well as the lack of any specific future development plans for the Subject Property, Lake Elmo will be able to continue to carry on the functions of government without undue hardship if the Subject Property is detached.⁷⁶

Manning Avenue

82. Manning Avenue south of Trunk Highway 36 was established long ago by prescriptive easement over the Nass northern parcel and the Bidon parcel.⁷⁷ The roadway is approximately five blocks long, from Highway 36 to the end of the gravel road at 55th Street. When the Sanctuary development was approved, the developer provided funds to pave the road from 58th Street to Highway 36.⁷⁸

83. In Lake Elmo's comprehensive plan, this segment of Manning Avenue is not identified as either a major collector or minor collector roadway.⁷⁹ In 2009, its existing annual average daily traffic (AADT) count was 395; its projected volume in 2030 is 400.⁸⁰

84. If the detachment were granted, Manning Avenue, as it runs through the Nass property and the Bidon property south of Highway 36, would be detached from Lake Elmo, but the portion of Manning Avenue that runs through the Hauth property, which is not seeking detachment, would remain in Lake Elmo. In addition, the portions of the road south of the Bidon parcel to the City's wellhouse would remain in Lake Elmo.⁸¹

85. Regardless of whether Manning Avenue south of Highway 36 is located in Stillwater Township or Lake Elmo, it would continue as a public road with existing prescriptive easements. People who live in the Sanctuary area or in the Subject Property would be able to use Manning Avenue to enter and exit Highway 36.⁸² The road authority would be either Stillwater Township or Lake Elmo, depending on its location. There is nothing unusual about roadways traversing different jurisdictions,

⁷⁵ Test. of T. Bouthilet.

⁷⁶ *Id.*

⁷⁷ Test. of D. Thurmes; Ex. 101.

⁷⁸ Test. of J. Griffin.

⁷⁹ Ex. 125, Figure 2.

⁸⁰ Ex. 125, Figures 3 and 6.

⁸¹ Test. of D. Thurmes.

⁸² *Id.*

although it would be unusual for a road to move back and forth between jurisdictions over such a short distance.⁸³

86. Approximately one mile west of Manning Avenue is Lake Elmo Avenue (CSAH 17). CSAH 17 runs north-south through the heart of Lake Elmo's Old Village (its historic main street), linking Highway 36 on the north with Interstate I-94 on the south.⁸⁴

87. In Lake Elmo's comprehensive plan, CSAH 17 is identified as an "A Minor Arterial" roadway. In 2009, the roadway's existing annual average daily traffic (AADT) count was 3,100 to 3,200 in the segment closest to the Subject Property; its projected volume for the same segment in 2030 is 11,200.⁸⁵

88. The Minnesota Department of Transportation is planning a number of long-term changes to control access to Highway 36. The Highway 36 Corridor Management Plan calls for construction of an interchange at CSAH 15 (Manning Avenue) and an overpass or interchange at CSAH 17. It also calls for the building of support roadways in conjunction with land development and to support the interchanges at CSAH 15 and CSAH 17. Specifically, it calls for construction of supporting roadway segments adjacent to the south side of Highway 36 between CSAH 17 and CSAH 15, as well as frontage road connections on the north side of Highway 36 at CSAH 15.⁸⁶ The Plan identifies representatives from Stillwater Township and the City of Lake Elmo as Advisory Committee Participants.⁸⁷

89. One conceptual plan prepared by MnDOT and Washington County would use a portion of the Nass and Bidon parcels, and part of Stillwater Township, to create the interchange and supporting roadways and ramps at Manning Avenue.⁸⁸

90. Lake Elmo would like to maintain land use and zoning control over the Subject Property to "preserve safe access to Highway 36" for residents of the northern part of the City, including the Sanctuary development. According to Lake Elmo's mayor, Dean Johnston, Lake Elmo residents on the north side of the City have indicated that they will "leave the City" if they do not have safe access to Highway 36. The Mayor also stated that Lake Elmo is home to a number of doctors who need safe access to Highway 36 in order to get to and from their patients.⁸⁹

91. Depending on the timing of MnDOT's plans for an interchange at Manning Road (which does not appear to be funded at this point), the project might involve property within the boundaries of Stillwater Township, the City of Stillwater, and the City of Lake Elmo.

⁸³ *Id.*

⁸⁴ Ex. 19 at III-10.

⁸⁵ Ex. 125, Figures 2, 3, and 6.

⁸⁶ Ex. 126 at ES-2, ES-3, 23.

⁸⁷ Ex. 126 (Participant List).

⁸⁸ Test. of J. Griffin; Ex. 123.

⁸⁹ Test. of D. Johnston.

92. There is no evidence that unsafe conditions would be created if Lake Elmo and Stillwater Township shared road authority over the five blocks of Manning Road in the Subject Area, nor is there any evidence that the City's access to Manning Road or Well House #2 would be impaired if road authority were shared.

Allocation of Indebtedness

93. The City has not provided any improvements to the Subject Area that resulted in assessments to the property. The City does not hold the Subject Area responsible for any of the City's bonded indebtedness.⁹⁰

94. Pursuant to Minn. Stat. § 414.06, subd. 3, the Chief Administrative Law Judge has discretion to relieve the detached area of the primary responsibility for any existing indebtedness of the municipality and to require it to assume the indebtedness of the township of which it becomes a part in such proportion as deemed just and equitable.

95. It is appropriate to relieve the Subject Property of responsibility for any existing indebtedness of Lake Elmo.

Hearing Costs

96. The parties did not agree to a division of the costs of this proceeding.

97. It is appropriate to allocate the costs of the proceeding on an equitable basis.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.06 and 414.12 and by the assignment by the Director of the MBA to the Office of the Administrative Hearings.

2. Proper notice of the hearing was given and this matter is properly before this Administrative Law Judge.

3. Petitioners have the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.

4. Minn. Stat. § 414.06, subd. 3, provides in part:

Upon completion of the hearing, the chief administrative law judge may order the detachment on finding that the requisite number of property

⁹⁰ Ex. 109 at 7.

owners have signed the petition if initiated by property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development. The chief administrative law judge may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.

5. The Petitioners have shown by a preponderance of the evidence that the detachment criteria set forth in the first sentence of Minn. Stat. § 414.06, subd. 3, have been met in this proceeding:

- a. The proceeding was properly initiated by a Petition for Detachment signed by all of the property owners in the subject area;
- b. The subject area is rural in character, and it has not been developed for urban residential, commercial or industrial purposes;
- c. The subject area is within the boundaries of Lake Elmo and abuts a municipal boundary;
- d. The detachment of the subject area would not unreasonably affect the symmetry of Lake Elmo; and
- e. The subject area is not needed for reasonably anticipated future development.

6. Because the detachment of the subject area would not affect Lake Elmo's ability to continue to carry on the functions of government and Lake Elmo would not suffer undue hardship, the Petitioners have also satisfied the criteria set forth in the second sentence of Minn. Stat. § 414.06, subd. 3.

7. Minn. Stat. § 414.06, subd 3, provides for allocation of debt between the entities as follows:

The detached area may be relieved of the primary responsibility for existing indebtedness of the municipality and be required to assume the indebtedness of the township of which it becomes a part, in such proportion as the chief administrative law judge shall deem just and equitable

8. After consultation with and approval by the Chief Administrative Law Judge, it is appropriate for the Subject Property to be relieved of responsibility for its share of any indebtedness of Lake Elmo.

9. Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of the costs before the hearing, the costs “must be allocated on an equitable basis by the . . . chief administrative law judge.”

10. After consultation with and approval by the Chief Administrative Law Judge, it is appropriate to allocate the costs of this proceeding as follows: to the City 70%, to the Petitioners 30%.

11. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference into the Findings and Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. The Petition for the Detachment of the Subject Property from the City of Lake Elmo is **GRANTED**.
2. The Subject Property is relieved of responsibility for any existing indebtedness of Lake Elmo and is required to assume its proportion of Stillwater Township’s indebtedness.
3. The Executive Director of the Municipal Boundary Adjustments Unit shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.
4. Pursuant to Minn. Stat. § 414.12, subd.3, the cost of these proceedings shall be divided as follows: to the City, 70%, to Petitioners, 30%.
5. This Order shall become effective on January 3, 2012.

Dated: January 3, 2012

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Approved as to the Allocation of Outstanding
Bonded Indebtedness and Division of Costs:

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

Dated: January 3, 2012

Reported: Digitally Recorded; No Transcript Prepared.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.06, 414.09, and 414.12. Any person aggrieved by this Order may appeal to District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.⁹¹

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of the Order.⁹² A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

MEMORANDUM

This is a detachment proceeding under Minn. Stat. Chapter 414 to consider a petition filed with the Municipal Boundary Adjustment Unit. All of the property owners of the four parcels that make up the Subject Property located at the northeastern corner of the City of Lake Elmo seek to detach from the City and become part of Stillwater Township.

I. The Subject Area Meets the Initial Statutory Factors

As set forth in the first sentence of Minn. Stat. § 414.06, subd. 3, a petition for detachment may be granted if: (1) the requisite number of property owners signed the petition; (2) the property is rural in character and not developed for urban, residential, commercial or industrial purposes; (3) the property is within the boundaries of the municipality and abuts a boundary; (4) the detachment would not unreasonably affect the symmetry of the detaching municipality; and (5) the land is not needed for reasonably anticipated future development.

A. The Petition Is Signed by Property Owners

In this matter, the total area of the property proposed for detachment consists of 57.17 acres and is owned by Bernard and Loella Nass, Thomas and Patricia Bidon, and Robert Buberl. All of the property owners signed the Amended Petition.

B. The Subject Area Is Rural in Character

The Petitioners have the burden of showing that the property “is rural in character and not developed for urban residential, commercial, or industrial purposes”⁹³ The term “rural” is not defined in Minnesota Statutes Chapter 414 or in the rules issued by

⁹¹ Minn. Stat. § 414.07, subd. 2.

⁹² Minn. R. 6000.3100.

⁹³ Minn. Stat. § 414.06, subd. 3.

the MBA Unit. The Merriam-Webster On-Line Dictionary defines “rural” as “of or relating to the country, country people or life, or agriculture.”⁹⁴ Similarly, the Oxford Dictionary defines “rural” as “relating to or characteristic of the countryside rather than the town.”⁹⁵

When the common meaning of “rural” is applied to the facts of this case, it is evident that the subject area qualifies as “rural in character and not developed for urban residential, commercial, or industrial purposes” The Subject Property consists of four parcels. The existing and planned future zoning is Agricultural, and under Lake Elmo’s Comprehensive Plan 2005-2030, the existing and future land use designation for the four parcels is RAD (Rural Agricultural Density). None of the parcels are served by municipal sewer, and Lake Elmo does not plan to extend sewer service to this area before 2030. The parcels are also not hooked up to municipal water, although there is nearby access to city water connections.

There are only two residences on the 57 acres of the Subject Property. The Nass southern parcel has a house, and the Bidons have a house. The Nass northern parcel was used for pasture and boarding horses, and the southern parcel is wooded and has been used for a small amount of tree farming. The Bidons use their parcel for residential purposes. Robert Buberl uses his property in Lake Elmo for composting. There are no buildings or permanent structures on the Buberl property located in Lake Elmo. Mr. Buberl does have buildings associated with his composting business, but the buildings are on his property located in Oak Park Heights.

The City argues that the Subject Property is not rural in character because it contains no farms or grazing land and is located at a “significant access point” to Lake Elmo. The City points out that Manning Avenue provides the only vehicular access to the Subject Property and is one of only a few access points from Highway 36 to the northern portion of Lake Elmo, which includes the Sanctuary housing development. According to the City, the high level of integration of the Subject Property with the rest of Lake Elmo, the lack of agricultural activities on the parcels, and Mr. Buberl’s commercial recycling activities render the Subject Area not rural in character. The City also asserts that an area’s existing land use designation and zoning is not determinative of whether the area is in fact rural in character.

The Administrative Law Judge is not persuaded by the City’s arguments. The detachment statute, Minn. Stat. § 414.06, previously provided that property situated within a municipality and abutting the municipal boundary, that was “unplatted, and occupied and used primarily for agricultural purposes,” may be detached from the municipality. In 1978, the legislature amended the statute to allow for detachment of property that was “rural in character and not developed for urban residential, commercial, or industrial purposes.”⁹⁶ The change deleted the requirement that property be occupied and used for agricultural purposes and substituted a more general

⁹⁴ <http://www.merriam-webster.com/dictionary/rural>.

⁹⁵ http://www.askoxford.com/results/?view=dev_dict&field-12668446=rural&branch=13842570&textsearchtype=exact&sortorder=score%2Cname.

⁹⁶ Minn. Laws 1978, ch. 705, § 24. The cases cited by the City, dating mostly from the 1920s and 1930s, were decided under the earlier version of the statute.

requirement that property to be detached must be “rural in character and not developed for urban residential, commercial, or industrial purposes.” The City’s argument that the Subject Property may not be detached because there is currently no agricultural use being made of it is contrary to the language of the statute.

The plain language of Minn. Stat. § 414.06 allows detachment to be ordered as long as the property is rural in character and not developed for urban residential, commercial or industrial purposes; the other statutory factors are also satisfied; and detachment would not result in undue hardship for the municipality. The detachment statute does not require that the land proposed for detachment must be used solely or primarily for agricultural purposes, and it does not prohibit detachment of rural property that is located in an area that provides a “significant access point” to other developed residential areas of the City. The Petitioners have established that the Subject Property is rural in character and is not developed for urban residential, commercial or industrial purposes.

C. The Subject Area Is Within the Boundaries of the Municipality and Abuts the Municipality’s Boundary

The parties agree that the Subject Area is located totally within the boundaries of Lake Elmo. The City argues, however, that each of the four separate parcels that make up the Subject Area must abut the municipal boundary. Because the southern Nass parcel and the Bidon parcel do not separately abut a City boundary, the City contends these two parcels should not be detached. It also contends that because the Nass northern parcel abuts Highway 36 rather than the City’s boundary north of the highway, it does not abut a municipal boundary.

The City has thus argued on the one hand that if these landowners seek development at a higher density than currently allowed by its zoning ordinances, they should simply join together and assemble 40 contiguous acres so that they can develop the property as an open space residential development; on the other hand, it argues that they should not be considered together for purposes of detachment. In addition, the City has previously admitted that the perimeter of the Subject Property is 55% bordered by the City of Lake Elmo, 23% by Stillwater Township, and 22% by the City of Oak Park Heights.⁹⁷

There is no requirement under Minn. Stat. § 414.06 that each separate parcel comprising the total land proposed for detachment must abut a boundary. In this case, the Buberl property abuts the City’s northern and eastern boundaries, and the other parcels share a boundary with the Burbel parcel. The Subject Property as a whole meets the statutory criteria that the land proposed for detachment abuts a municipal boundary.

⁹⁷ Ex. 109 at p. 2.

D. Detachment Would Not Unreasonably Affect the Symmetry of the City

Another factor to be considered under the detachment statute is whether the detachment would “unreasonably affect the symmetry of the detaching municipality.”

The City of Lake Elmo argues that if the Subject Property is detached, its northeastern border would turn into a “gerrymandered mess” because Stillwater Township will gain jurisdiction over the area as a new remnant parcel when the Township itself is principally located some 3 miles away. The City objects to Stillwater Township having a “peninsula” that would “extend into Lake Elmo.” The record reflects, however, that the Subject Property abuts Stillwater Township. The fact that detachment of the Subject Area will result in that remnant parcel extending south of Highway 36 is not evidence of an unreasonable effect on the symmetry of Lake Elmo’s boundaries. The City’s general concern about the jurisdictional reach of Stillwater Township is not a reason to deny detachment if the statutory criteria are met.

Lake Elmo also argues that the withdrawal of the Hauth property from the Petition means that a detachment of the Subject Area will cause the City’s boundary to skip around the Hauth parcel in an irregular fashion and will result in overlapping jurisdictions for Manning Avenue. Stillwater Township will be responsible for maintaining Manning Avenue bordering along the northern Nass property, but the road would revert to Lake Elmo’s responsibility along the Hauth property. Manning Avenue would then go back to Stillwater Township’s jurisdiction next to the Bidon and Nass southerly parcels, and would return to Lake Elmo’s jurisdiction south of the Nass property. The City contends that responsibility for a road that represents a “major access point” into Lake Elmo should not alternate between municipalities. According to Lake Elmo, detachment of the Subject Area will result in the loss of a badly needed road.

As an initial matter, the fact that detachment of the Subject Area will result in Manning Avenue alternating between the jurisdictions of Lake Elmo and Stillwater Township is unrelated to the issue of symmetry of Lake Elmo’s boundaries. The Administrative Law Judge concludes that detachment of the Subject Property will not unreasonably affect the symmetry of Lake Elmo’s boundaries. The City currently has an unusual diagonal boundary along its northeast corner due to the manner in which the Buberl property was previously divided between Lake Elmo and Oak Park Heights. Detachment of the Subject Property will remove that diagonal boundary and enhance Lake Elmo’s symmetry by establishing Manning Avenue as the eastern boundary. While it is true that the detachment will create a bit of a jog around the Hauth property, this small area does not amount to an unreasonable effect on the symmetry of Lake Elmo’s boundaries, given the symmetry otherwise gained by detachment.

Moreover, the City’s relatively recent assertion of the importance of Manning Road south of Highway 36 is inconsistent with its actual analysis of the roadway in its comprehensive plan and with its decision to vacate 55th Street. The comprehensive plan reflects that traffic on this segment was not expected to increase significantly

between 2009 and 2030 (from 395 to 400 AADT). Other roadways, most notably Lake Elmo Avenue (CSAH 17) one mile to the west, are projected to have substantial increases in traffic by 2030.⁹⁸ The City also closed 55th Street knowing that this decision would limit access by Lake Elmo residents to Manning Road and Highway 36 and knowing that this decision would limit the development opportunities of landowners in the Subject Area. There is no credible evidence that the sharing of road authority with Stillwater Township over this five-block segment of mostly unpaved roadway will result in more limited access to Highway 36 for Lake Elmo residents or will have any effect on highway safety improvements mandated by MnDOT.

E. The Subject Area Is Not Needed for Reasonably Anticipated Future Development

Under Minn. Stat. § 414.06, subd. 3, a petition for detachment may be granted if the land is not needed for reasonably anticipated future development. Lake Elmo asserts that the Subject Area is needed to meet certain population and household commitments required by the Metropolitan Council. The Administrative Law Judge finds this argument unconvincing for several reasons.

First, RAD is a common land use designation in Lake Elmo and exists in large quantities throughout the city. The City has no specific development plans for the Subject Property, and it is not included in areas staged for growth in the comprehensive plan. None of the parcels are served by municipal water or sewer service, and Lake Elmo does not ever plan to extend sewer service to this area.

The record also reflects that this area will likely never be developed in a manner consistent with the City's land use plan. Even if the Petitioners combined their parcels and found an interested developer, as the City recommends, residential development of the Subject Property is not realistic given the power lines on the Nass northern parcel, the proximity of Highway 36, and the commercial buildings located within sight of the property directly east in Oak Park Heights. Moreover, the Petitioners, not the City, are the parties who eventually would like to position the property for future development. The Petitioners have sought rezoning and annexation in order to achieve this end, but the City has declined to consent. If detachment were denied, the property would more likely than not remain as it is now.

The record as a whole does not support a finding that the City needs the Subject Area for reasonably anticipated future development, despite the numerous assertions to the contrary by City witnesses. Instead, the record established that Lake Elmo seeks to retain regulatory control over the Subject Area in order to maintain it as a semi-rural buffer to existing and future commercial development.⁹⁹ This may well be a legitimate land use goal for the City, but it is a different goal than needing the property for future development. The Administrative Law Judge concludes that the Petitioners have satisfied this criteria for detachment.

⁹⁸ Ex. 125, Figures 3 and 6.

⁹⁹ See Test. of D. Johnston.

II. Detachment Will Not Cause Undue Hardship

Even if all of the initial statutory factors are met, the petition for detachment may still be denied if the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.¹⁰⁰

The City argues that detachment of the Subject Property would create undue hardship for Lake Elmo by causing financial damage to its water enterprise fund and the loss of regulatory authority over the parcels. The City maintains that the financial health of its water utility is predicated on obtaining as many users as possible due to the relatively low-density developments in Lake Elmo. According to the City, every parcel that is detached from Lake Elmo makes it that much more costly for Lake Elmo to provide water service to the rest of the City. In addition, the City contends that it has invested in and established water infrastructure to serve the Subject Property and that it will lose that investment if detachment is granted.

The City also contends that detachment will result in the loss of its ability to regulate potential nuisances or other activities on the Subject Property. The City points out that, unlike most of Stillwater Township, Lake Elmo homes and infrastructure are directly adjacent to the Subject Property and that any nuisance activities will affect it more directly than they would affect Stillwater Township.

The Petitioners argue that there is no evidence that Lake Elmo would be unable to function if the Subject Property is detached. The Petitioners point out that the 57 acres of land proposed for detachment is very small in comparison to the 15,523 acres of the City. In addition, the contribution of the detached property to the City's overall budget is minimal. The City's budget for 2010 was approximately \$2,500,000 and it will lose only about \$3,900 in property tax revenues from the Subject Property. The loss of acreage and tax revenue attributable to the detachment is minimal.

The Administrative Law Judge finds the City's claim that detachment of the Subject Property will cause financial damage to its water enterprise fund to be unconvincing, particularly because the Subject Property has only two houses on it and because higher-density residential development of the property is unlikely, for the reasons stated above. The record does not disclose the amount of the City's financial investment specifically to stub water service at the point where it could be extended to serve these two homes. The City has not extended water service to the Subject Property, it has made no assessments to the property for that purpose, and it has not contended that the Subject Property is responsible for any of its indebtedness. Likewise, Lake Elmo's concern about potential nuisance activities on the Subject Property is speculative and not evidence of an undue hardship that would render it unable to carry out government functions. The Administrative Law Judge concludes that detachment of the Subject Property will not render the remainder of Lake Elmo unable to carry on the functions of government without undue hardship within the meaning of the statute.

¹⁰⁰ Minn. Stat. § 414.06, subd. 3.

III. Other Contentions

The City argues that the Petitioners' attempt to detach from Lake Elmo does not comply with the historical intent of the detachment statute and instead merely serves the personal preferences of the Petitioners. According to the City, the intent of the detachment statute is to allow rural or agricultural lands, which are not needed for municipal purposes and which receive no benefit from being within city limits, to separate from cities in order to preserve their rural character and agricultural use. In this case, some of the Petitioners have conceded that their interest in detaching from Lake Elmo is not to preserve the rural or agricultural uses of their property, but to better position their property for future annexation or sale.

The Administrative Law Judge is not persuaded that detachment from a city to a township may only be undertaken if the goal is to preserve the rural character of the subject property. Instead, the ALJ agrees with the Petitioners that if the statutory requirements for detachment are met, the intent of the parties is not relevant. In *Village of Goodview v. Winona Area Industrial Development Association*,¹⁰¹ the Minnesota Supreme Court rejected a similar argument. In that case, the Village of Goodhue declined to allow annexation of the property in question to the City of Winona, which intended to develop the property's industrial potential. The property owner then petitioned for detachment from the Village to Winona Township. The Municipal Board ordered the detachment, finding the detachment criteria had been satisfied even though the effect of the detachment was to create an "island" of land bounded on three sides by the Village and on the fourth side by the city limits of Winona, which reverted to Winona Township. The Village appealed and argued that the intent of § 414.06 was to allow property not needed in a municipality to be turned back to a township, but not to create an island unconnected to the township proper. The Minnesota Supreme Court held that the specific statutory criteria for detachment were the only pre-requisites to detachment and that it would not read other requirements into the statute.¹⁰²

The Administrative Law Judge rejects the City's argument that detachment of the Subject Property in this case would represent a "radical departure" from statutory intent. Instead, the Administrative Law Judge concludes that Lake Elmo's concerns about Petitioners' motivations and the possibility that the Subject Property may in the future be annexed to another municipality and developed in a manner not to its liking are not a proper basis for denying detachment.

IV. Allocation of Debt

Minn. Stat. § 414.06, subd.3, gives the Administrative Law Judge the discretion to relieve the detached area of the primary responsibility for the existing indebtedness of the municipality as is equitable. The City has not contended that any existing indebtedness should be assigned to the Subject Property. The Administrative Law

¹⁰¹ 289 Minn. 378, 184 N.W.2d 662 (Minn. 1971).

¹⁰² 184 N.W.2d at 664.

Judge concludes that it is appropriate to relieve the Subject Property of responsibility for any existing indebtedness of Lake Elmo.

V. Division of Costs

The parties did not agree to a division of the hearing costs between themselves. Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of the costs before the hearing, the costs “must be allocated on an equitable basis by the . . . chief administrative law judge.” It is concluded that the City shall bear 70% and the Petitioners shall bear 30% of the cost of the proceedings attributable to the Petition.

VI. City of Stillwater Closing Argument

During the hearing, the City of Stillwater’s witness, Bill Turnblad, testified that the City had taken no position on the detachment and that the City was remaining neutral on the issue whether property south of Highway 36 should potentially be annexed into the City. At the conclusion of the hearing on October 5, 2011, the evidentiary record closed and the parties agreed to submit written post-hearing argument by October 31, 2011. On October 31, 2011, the City of Stillwater submitted a “Closing Argument” that consisted of ten declaratory statements ending with “the subject property should remain in the City of Lake Elmo,” indicating the statements were approved by a resolution of the City Council.

The Petitioners objected to the closing argument and requested that it be disregarded and struck from the record, on the basis that the evidentiary record had closed, the submission was untimely, and the content of the argument was unfairly prejudicial to the Petitioners because they could not cross-examine any witness concerning it or otherwise respond to the information contained therein. The City of Stillwater did not respond to these objections. The City of Lake Elmo advocated against striking the argument, contending the City of Stillwater was “entitled to express its views on this matter of great importance to the municipalities at any time.”

The evidentiary record closed at the conclusion of the hearing. The parties, at the urging of the City of Lake Elmo, gave oral closing arguments at that time, which were later supplemented by the written closings received on October 31, 2011. The City of Stillwater did not seek or obtain permission to re-open the record before filing a written closing argument in the form of a document approved by resolution of the City Council. Accordingly, to the extent the City of Stillwater’s written closing argument contains assertions of fact, the Administrative Law Judge has concluded that these factual assertions are outside the evidentiary record, and they have been disregarded. The City of Stillwater’s written closing argument is retained in the record solely as argument, not as substantive evidence of the City’s position.

K.D.S.